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No. 115

In the Supreme Court of the United States

OCTOBER TERM, 1968

ROLAND H. DEL MAR AND THE RIGGS NATIONAL BANK OF WASHINGTON, D.C., AS EXECUTORS OF THE ESTATE OF CHARLES DELMAR, DECEASED, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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Charles Delmar, a resident of the District of Columbia, died testate on August 17, 1963, survived by a widow and one son (Pet. 3). Mrs. Delmar, dissatisfied with the terms of her husband's will, elected under the laws of the District of Columbia to take one-third of the "surplus" remaining in the estate after the payment of "debts" (Pet. 4a). See Sections 18–101, 18–211, 18–530, 18–701 and 18–703 of the District of Columbia Code (1961 ed.), as amended on September 14, 1961. The question raised below was whether the dissenting widow's share of the "surplus", and thus the marital deduction under Section 2056 of the Internal Revenue Code of 1954, was to be com-

puted after payment of federal estate taxes from the estate as a whole, thus reducing the "surplus" and the marital deduction, or whether the estate tax should be "equitably apportioned" so that the widow's share would not be reduced by the payment of such estate taxes (Pet. 4a–5a). The district court and the court below rejected the so-called "equitable apportionment" argument, holding that the entire amount of the estate tax was deductible as a "debt" before computing the "surplus" in which the widow shared (Pet. 5a). This ruling is correct. It relates moreover, to the sort of wholly local question of District of Columbia law that is not ordinarily reviewed in this Court.

1. The marital deduction is limited by the amount that passes to the surviving spouse of the deceased, up to half the gross estate. But determination of the amount that should pass on to the spouse is a question of state, not federal, law. *Riggs* v. *Del Drago,* 317 U.S. 95; see, also, *Harrison* v. *Northern Trust Co.,* 317 U.S. 476.

For these purposes, the local statutes and decisional law of the District of Columbia perform the same function as State law, even though Congress promulgates the local statutes. *Fennell* v. *Bache,* 123 F. 2d 905 (C.A.D.C.); see *AM. Security Co.* v. *District of Columbia,* 224 U.S. 491; cf. Fed. R. Civ. P. 81(e). As the court below ruled (Pet. 5a), the "settled course of decisions" in the District of Columbia is that the doctrine of "equitable apportionment" may not be invoked to enhance a dissenting widow's share. *Herson* v. *Mills,* 221 F. Supp. 714 (D.D.C.); see, also, *Hepburn* v. *Winthrop,* 65 App. D.C. 309, 83 F. 2d 566.

There is nothing in the language or history of the Internal Revenue Code to support petitioners' theory (Pet. 5–13) that Congress by implication changed this rule when it enacted the marital deduction.

2. The result here does not, as petitioners argue (Pet. 18–21), contravene the requirement of Article 1, Section 8, clause 1, of the Constitution that taxes "shall be uniform throughout the United States". This provision allows resolution of property rights pursuant to the local law in order to determine the ultimate impact of the federal estate tax. *Riggs* v. *Del Drago, supra; Fernandez* v. *Weiner,* 326 U.S. 340. The uniformity in excise taxes required by the Constitution is "geographical uniformity, not uniformity or intrinsic equality and operation". *Id.* at 359; *United States* v. *Rompel,* 326 U.S. 367. Thus, the requisite geographical uniformity is not lacking because different jurisdictions have enacted laws of varying natures affecting the amount of the marital deduction, and this is just as true when the local law is a District of Columbia statute.

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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JULY 1968.

U.S. GOVERNMENT PRINTING OFFICE: 1968